



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FCP/145640

PRELIMINARY RECITALS

Pursuant to a petition filed November 29, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc. ["CARE"] in regard to Medical Assistance ["MA"], a Hearing was held on January 30, 2013, at the Dane County Department of Human Services ["County"] Madison, Wisconsin. At petitioner's request a Hearing scheduled for January 15, 2013 was rescheduled.

The issue for determination is whether petitioner's start date for the MA Partnership Long Term Care waiver program ["Partnership"] can be backdated to May 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED] (not present at January 30, 2013 Hearing)

[REDACTED]

Petitioner's Representative:

Attorney John F. Koenig (appeared via telephone at his own request)
6041 Monona Drive Suite 100
Monona, WI 53716-3930

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jean Anton, Accounts Receivable ["AR"] & Enrollment Manager
Jennifer Danz, Enrollment Services Representative
Carmen Lord, Member Rights Specialist
Care Wisconsin First, Inc.
2802 International Lane
P.O. Box 14017
Madison, Wisconsin
53708-0017

OTHER PERSON PRESENT:

Eric Deml, County ESS

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 81 years; CARES # [REDACTED]) is a resident of Dane County, Wisconsin.
2. On August 9, 2012 petitioner applied for Partnership and sought Partnership coverage from May 1, 2012 forward. Exhibits #1 [DHA Case No. MRA/143512 (Wis. Div. of Hearings & Appeals October 4, 2012) (DHS) see, *Finding of Fact #2*], #8 & #10.
3. In October 2012 petitioner was found financially eligible for Partnership retroactively effective May 1, 2012. Exhibits #1 [DHA Case No. MRA/143512 (Wis. Div. of Hearings & Appeals October 4, 2012) (DHS)], #2, #3, #5 & #8.
4. On October 17, 2012 petitioner enrolled in Partnership. Exhibits #2, #3, #4, #5 & #6.

DISCUSSION

In this case CARE denied petitioner Partnership eligibility starting May 2012 for 2 reasons. First, CARES argues that petitioner was not a recipient of MA in May 2012. Second, CARE argues that petitioner had not enrolled in Partnership in May 2012. CARE post-hearing brief, page 1(top paragraph).

(I) FULL-BENEFIT MA

In order to be eligible for Partnership a person must, among other things, be eligible for full-benefit MA. *Medicaid Eligibility Handbook* [“MEH”] 30.1, 30.3 & 30.5.1; Exhibits #7(page 22; section) A.2. & #8. There are several types of full-benefit MA one of which is “institutions MA.” MEH 21.2.3.¹ Partnership is considered to be a type of institutions MA. MEH 27.4.1.1 & 30.3.3.

In October 2012 petitioner was found financially eligible for Partnership retroactively effective May 1, 2012.² However, there are other requirements, in addition to the financial requirements, that must be satisfied before a person is eligible for Partnership. It follows that petitioner satisfied the “full-benefit” MA requirement in May 2012 only if, in addition to the financial eligibility requirements, she also satisfied all other Partnership eligibility requirements at that time.

(II) PARTNERSHIP ENROLLMENT

In order to be eligible for Partnership a person, in addition to the full-benefit MA requirement, must make the choice to enroll. The choice to enroll is verified by the signature of the member or the member’s authorized representative on an enrollment form approved by the Wisconsin Department of Health Services [“DHS”]. The enrollment date is a mutually agreed upon date chosen by the participant

¹ Petitioner does not claim that she was eligible for any type of full-benefit MA in May 2012 other than institutions MA.

² CARE acknowledges this -- but in effect argues that petitioner did not satisfy the “full-benefit” MA requirement because she was not a recipient of MA in May 2012. However, as noted above, all that is required is that the applicant be eligible for full-benefit MA. CARE recognizes this. CARE post-hearing brief, page 1(bottom paragraph).

and the , provided that the participant meets all other eligibility requirements on that date. MEH 30.5.1; Exhibits #7(page 22; section) A.5. & #9. Thus, the choice to enroll must be made at a time and on a date when it is known that the participant meets all other eligibility requirements. ³ In petitioner's case this was not until October 2012.

In May 2012 petitioner did not meet "all other eligibility requirements" for Partnership because she had not, at that time, been determined to be financially eligible. As noted in the above *Findings of Fact*, in October 2012 petitioner was determined to be financially eligible retroactively effective May 1, 2012 -- but that determination was not made until October 2012. Such a determination did not exist in May 2012. Thus, petitioner's start date for Partnership can not be backdated to May 2012. It is noted that petitioner did not even apply for Partnership until August 2012.

Petitioner points to the following language found in the *Medicaid Eligibility Handbook*: "It is possible that the client may be eligible for regular MA using the non-Partnership (waiver) eligibility criteria for the 3-month period prior to their month of application as well as the portion of the month prior to enrollment date. This potential backdated eligibility should be examined as it is for any other MA applicant." MEH 30.5.1; Exhibit #9; Petitioner's post-hearing brief, page 3. However, that language, by its own terms, applies to regular MA -- not Partnership. Likewise, petitioner's reliance on *Medicaid Eligibility Handbook* language having to do with Re-enrollment in Partnership is also misplaced since the current matter does not involve re-enrollment. MEH 30.5.3; Exhibit #9; Petitioner's post-hearing brief, page 3.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's start date for Partnership can not be backdated to May 2012.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

³ To allow enrollment prior to the time it is known that the participant meets all other eligibility requirements would make no sense -- especially given that Partnership is a managed care program.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of March, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 19, 2013.

Care Wisconsin
Office of Family Care Expansion
jkoenig@kohlslaw.com
LKnipfer@kohlslaw.com